

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4118

(By Delegate Moore)



Passed March 10, 2012

To Take Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4118

(BY DELEGATE MOORE)

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §30-6-22a; and to amend and reenact §61-12-9 of said code, all relating to cremation, preneed funeral contracts and disposition of remains generally; adding a definition of persons authorized to order cremation; clarifying required inquiry about deceased's desires; prioritizing individuals authorized to express desires of the deceased; clarifying funeral directors' responsibilities; establishing the right to control the disposition of the remains of a deceased person; determining who has that right; setting forth how that right may be forfeited; adding a definition of person authorized to agree to a cremation contract; and establishing an order of precedence among persons as to cremation and disposition of remains.

Be it enacted by the Legislature of West Virginia:

That §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended

by adding thereto a new section designated §30-6-22a; and that §61-12-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Apprentice” means a person who is preparing to
5 become a licensed funeral director and embalmer and is
6 learning the practice of embalming, funeral directing or
7 cremation under the direct supervision and personal
8 instruction of a duly licensed embalmer or funeral director.

9 (b) “Authorized representative” means a person legally
10 authorized or entitled to order the cremation of the deceased,
11 as established by rule. An authorized representative may
12 include in the following order of precedence:

13 (1) The deceased, who has expressed his or her wishes
14 regarding the disposal of their remains through a last will and
15 testament, an advance directive or preneed funeral contract,
16 as defined in section two, article fourteen, chapter forty-five
17 of this code;

18 (2) The surviving spouse of the deceased, unless a
19 petition to dissolve the marriage was pending at the time of
20 decedent’s death;

21 (3) An individual previously designated by the deceased
22 as the person with the right to control disposition of the

23 deceased's remains in a writing signed and notarized by the
24 deceased: *Provided*, That no person may be designated to
25 serve in such capacity for more than one nonrelative at any
26 one time;

27 (4) The deceased's next of kin;

28 (5) A court order;

29 (6) A public official who is charged with arranging the
30 final disposition of an indigent deceased; or

31 (7) A representative of an institution who is charged with
32 arranging the final disposition of a deceased who donated his
33 or her body to science.

34 (c) "Board" means the West Virginia Board of Funeral
35 Service Examiners.

36 (d) "Certificate" means a certification by the board to be
37 a crematory operator.

38 (e) "Courtesy card holder" means a person who only
39 practices funeral directing periodically in West Virginia and
40 is a licensed embalmer and funeral director in a state which
41 borders West Virginia.

42 (f) "Cremated remains" or "cremains" means all human
43 remains, including foreign matter cremated with the human,
44 recovered after the completion of cremation.

45 (g) "Cremation" means the mechanical or thermal process
46 whereby a dead human body is reduced to ashes and bone
47 fragments and then further reduced by additional
48 pulverization, burning or recremating when necessary.

49 (h) “Crematory” means a licensed place of business
50 where a deceased human body is reduced to ashes and bone
51 fragments and includes a crematory that stands alone or is
52 part of or associated with a funeral establishment.

53 (i) “Crematory operator” means a person certified by the
54 board to operate a crematory.

55 (j) “Crematory operator in charge” means a certified
56 crematory operator who accepts responsibility for the
57 operation of a crematory.

58 (k) “Deceased” means a dead human being for which a
59 death certificate is required.

60 (l) “Embalmer” means a person licensed to practice
61 embalming.

62 (m) “Embalming” means the practice of introducing
63 chemical substances, fluids or gases used for the purpose of
64 preservation or disinfection into the vascular system or
65 hollow organs of a dead human body by arterial or
66 hypodermic injection for the restoration of the physical
67 appearance of a deceased.

68 (n) “Funeral” means a service, ceremony or rites
69 performed for the deceased with a body present.

70 (o) “Funeral directing” means the business of engaging in
71 the following:

72 (1) The shelter, custody or care of a deceased;

73 (2) The preparation of a deceased for burial or other
74 disposition;

75 (3) The arranging or supervising of a funeral or memorial
76 service for a deceased; and

77 (4) The maintenance of a funeral establishment for the
78 preparation, care or disposition of a deceased.

79 (p) “Funeral director” means a person licensed to practice
80 funeral directing.

81 (q) “Funeral establishment” means a licensed place of
82 business devoted to: the care, preparation and arrangements
83 for the transporting, embalming, funeral, burial or other
84 disposition of a deceased. A funeral establishment can
85 include a licensed crematory.

86 (r) “Funeral service licensee” means a person licensed
87 after July 1, 2003, to practice embalming and funeral
88 directing.

89 (s) “License” means a license, which is not transferable
90 or assignable, to:

91 (1) Practice embalming and funeral directing;

92 (2) Operate a crematory or a funeral establishment.

93 (t) “Licensee” means a person holding a license issued
94 under the provisions of this article.

95 (u) “Licensee in charge” means a licensed embalmer and
96 funeral director who accepts responsibility for the operation
97 of a funeral establishment.

98 (v) “Memorial service” means a service, ceremony or
99 rites performed for the deceased without a body present.

100 (w) "Mortuary" means a licensed place of business
101 devoted solely to the shelter, care and embalming of the
102 deceased.

103 (x) "Person" means an individual, partnership,
104 association, corporation, not-for-profit organization or any
105 other organization.

106 (y) "Registration" means a registration issued by the
107 board to be an apprentice to learn the practice of embalming,
108 funeral directing or cremation.

109 (z) "State" means the State of West Virginia.

§30-6-22. Disposition of body of deceased person; penalty.

1 (a) No public officer, employee, physician or surgeon, or
2 other person having a professional relationship with the
3 deceased, shall send, or cause to be sent to an embalmer,
4 funeral director or crematory operator the body of a deceased
5 without first inquiring the desires of the deceased who has
6 designated his or her wishes regarding the disposal of their
7 remains through a last will and testament, an advance
8 directive or preneed funeral contract, as defined in section
9 two, article fourteen, chapter forty-five of this code; the
10 surviving spouse of the deceased, unless a petition to dissolve
11 the marriage was pending at the time of decedent's death;
12 and, an individual previously designated by the deceased as
13 the person with the right to control disposition of the
14 deceased's remains in a writing signed and notarized by the
15 deceased: *Provided*, That no person may be designated to
16 serve in such capacity for more than one nonrelative at any
17 one time. If there is no last will and testament, advance
18 directive or preneed funeral contract, surviving spouse, or
19 designated person, then the authority and direction of any
20 next of kin or person who may be chargeable with the funeral

21 expenses of the deceased shall be used as to the disposal of
22 the body of the deceased. The provisions of this subsection
23 are not applicable if the remains of the decedent are subject
24 to disposition pursuant to subsection (b) of this section.

25 (b) Notwithstanding any provision of this code to the
26 contrary, a United States Department of Defense Record of
27 Emergency Data Form (DD Form 93) executed by a declarant
28 who dies while serving in a branch of the United States
29 Military as defined in 10 U. S. C. §1481 constitutes a valid
30 form of declaration instrument and governs the disposition of
31 the declarant's remains. The person named in the form as the
32 person authorized to direct disposition of the remains may
33 arrange for the final disposition of the declarant's last
34 remains.

35 (c) Any person who violates the provisions of this section
36 is guilty of a misdemeanor and, upon conviction thereof, shall
37 be fined not less than \$500, nor more than \$1,000, or
38 imprisoned not less than ten days nor more than ninety days,
39 or both.

**§30-6-22a. Right of disposition; preneed contract; affidavit on
disposition of remains; role of county commission;
liability of funeral home.**

1 (a) Notwithstanding section twenty-two of this article, a
2 person who is eighteen years of age or older and of sound
3 mind, by entering into a preneed funeral contract, as defined
4 in section two, article fourteen, chapter forty-seven of this
5 code, may direct the location, manner and conditions of the
6 disposition of the person's remains and the arrangements for
7 funeral goods and services to be provided upon the person's
8 death. The disposition directions and funeral prearrangements
9 that are contained in a preneed funeral contract are not
10 subject to cancellation to revision unless any resources set

11 aside to fund the preneed funeral contract are insufficient
12 under the terms of the preneed funeral contract to carry out
13 the disposition directions and funeral prearrangements
14 contained in the contract.

15 (b) As to any matter not addressed in a preneed funeral
16 contract as described in subsection (a) of this section and
17 except as provided in subsection (c) of this section, the right
18 to control the disposition of the remains of a deceased person,
19 the location, manner and conditions of disposition, and
20 arrangements for funeral goods and services to be provided
21 vests in the following, in the order named, provided that the
22 person is eighteen years or older and is of sound mind:

23 (1) (A) A person designated by the decedent as the person
24 with the right to control the disposition in an affidavit
25 executed in accordance with paragraph (B) of this
26 subdivision; and

27 (B) A person who is eighteen years of age or older and of
28 sound mind wishing to authorize another person to control
29 the disposition of his or her remains may execute an affidavit
30 before a notary public in substantially the following form:

31 "I, _____, do hereby designate
32 _____ with the right to control the
33 disposition of my remains upon my death. I ___ have/ ___
34 have not attached specific directions concerning the
35 disposition of my remains with which the designee shall
36 substantially comply, provided that these directions are
37 lawful and there are sufficient resources in my estate to carry
38 out the directions.

39 _____

40 Signed

41 State of _____

42 County of _____

43 I, _____, a Notary Public of said
44 County, do certify that _____, as
45 principal whose name is signed to the writing above bearing
46 date on the _____ day of _____, 20____, has this day
47 acknowledged the same before me.

48 Given under my hand this _____ day of _____, 20__.

49 My commission expires: _____

50 _____
51 Notary Public”;

52 (2) The surviving spouse of the decedent;

53 (3) The sole surviving child of the decedent or, if there is
54 more than one child of the decedent, the majority of the
55 surviving children. However, less than one half of the
56 surviving children shall be vested with the rights under this
57 section if they have used reasonable efforts to notify all other
58 surviving children of their instructions and are not aware of
59 any opposition to those instructions on the part of more than
60 one half of all surviving children;

61 (4) The surviving parent or parents of the decedent. If
62 one of the surviving parents is absent, the remaining parent
63 shall be vested with the rights and duties under this section
64 after reasonable efforts have been unsuccessful in locating the
65 absent surviving parent;

66 (5) The surviving brother or sister of the decedent or, if
67 there is more than one sibling of the decedent, the majority of
68 the surviving siblings. However, less than the majority of
69 surviving siblings shall be vested with the rights and duties
70 under this section if they have used reasonable efforts to
71 notify all other surviving siblings of their instructions and are
72 not aware of any opposition to those instructions on the part
73 of more than one half of all surviving siblings;

74 (6) The surviving grandparent of the decedent or, if there
75 is more than one surviving grandparent, the majority of the
76 grandparents. However, less than the majority of the
77 surviving grandparents shall be vested with the rights and
78 duties under this section if they have used reasonable efforts
79 to notify all other surviving grandparents of their instructions
80 and are not aware of any opposition to those instructions on
81 the part of more than one half of all surviving grandparents;

82 (7) The guardian of the person of the decedent at the time
83 of the decedent's death if one had been appointed;

84 (8) The personal representative of the estate of the
85 decedent;

86 (9) The person in the classes of the next degree of
87 kinship, in descending order, under the laws of descent and
88 distribution to inherit the estate of the decedent. If there is
89 more than one person of the same degree, any person of that
90 degree may exercise the right of disposition;

91 (10) If the disposition of the remains of the decedent is
92 the responsibility of the state or a political subdivision of the
93 state, the public officer, administrator or employee
94 responsible for arranging the final disposition of decedent's
95 remains; or

96 (11) In the absence of any person under subdivisions (1)
97 through (10) of this subsection, any other person willing to
98 assume the responsibilities to act and arrange the final
99 disposition of the decedent's remains, including the funeral
100 director with custody of the body, after attesting in writing
101 that a good-faith effort has been made to no avail to contact
102 the individuals under subdivisions (1) through (10) of this
103 subsection.

104 (c) A person entitled under law to the right of disposition
105 forfeits that right, and the right is passed on to the next
106 qualifying person as listed in subsection (b) of this section, in
107 the following circumstances:

108 (1) Any person charged with murder or voluntary
109 manslaughter in connection with the decedent's death and
110 whose charges are known to the funeral director. However,
111 if the charges against that person are dismissed or if the
112 person is acquitted of the charges, the right of disposition is
113 returned to the person;

114 (2) Any person who does not exercise his or her right of
115 disposition within two days of notification of the death of
116 decedent or within three days of decedent's death, whichever
117 is earlier;

118 (3) If the person and the decedent are spouses and a
119 petition to dissolve the marriage was pending at the time of
120 decedent's death.

121 (d) Any person signing a funeral service agreement,
122 cremation authorization form or any other authorization for
123 disposition shall be deemed to warrant the truthfulness of any
124 facts set forth therein, including the identity of the decedent
125 whose remains are to be buried, cremated or otherwise
126 disposed of, and the party's authority to order the disposition.

127 A funeral home has the right to rely on that funeral service
128 agreement or authorization and shall have the authority to
129 carry out the instructions of the person or persons the funeral
130 home reasonably believes holds the right of disposition. The
131 funeral home has no responsibility to independently
132 investigate the existence of any next of kin or relative of the
133 decedent where a means of disposition is fully set forth in a
134 preneed funeral contract or other written directive of the
135 deceased in accordance with this section. If there is more
136 than one person in a class who are equal in priority and the
137 funeral home has no knowledge of any objection by other
138 members of that class, the funeral home may rely on and act
139 according to the instructions of the first person in the class to
140 make funeral and disposition arrangements, if no other person
141 in that class provides written objections to the funeral home.

142 (e) No funeral establishment or funeral director who
143 relies in good faith upon the instructions of a preneed funeral
144 contract, written directive of the deceased, or an individual
145 claiming the right of disposition in accordance with this
146 section shall be subject to criminal or civil liability or subject
147 to disciplinary action under this section for carrying out the
148 disposition of the remains in accordance with those
149 instructions.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-9. Permits required for cremation; fee.

1 (a) It is the duty of any person cremating, or causing or
2 requesting the cremation of, the body of any dead person who
3 died in this state, to secure a permit for the cremation from
4 the Chief Medical Examiner, the county medical examiner or
5 county coroner of the county wherein the death occurred.

6 Any person who willfully fails to secure a permit for a
7 cremation, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than \$200. A permit for
9 cremation shall be acted upon by the Chief Medical
10 Examiner, the county medical examiner or the county coroner
11 after review of the circumstances surrounding the death, as
12 indicated by the death certificate. The person requesting
13 issuance of a permit for cremation shall pay a reasonable fee,
14 as determined by the Chief Medical Examiner, to the county
15 medical examiner or coroner or to the Office of the Chief
16 Medical Examiner, as appropriate, for issuance of the permit.

17 (b) Any person operating a crematory who does not
18 perform a cremation pursuant to the terms of a cremation
19 contract, or pursuant to the order of a court of competent
20 jurisdiction, within the time contractually agreed upon, or, if
21 the cremation contract does not specify a time period, within
22 twenty-one days of receipt of the deceased person's remains
23 by the crematory, whichever time is less, is guilty of a
24 misdemeanor.

25 (c) Any person operating a crematory who fails to deliver
26 the cremated remains of a deceased person, pursuant to the
27 terms of a cremation contract, or pursuant to the order of a
28 court of competent jurisdiction, within the time contractually
29 agreed upon, or, if the cremation contract does not specify a
30 time period, within thirty-five days of receipt of the deceased
31 person's remains by the crematory, whichever time is less, is
32 guilty of a misdemeanor.

33 (d) Any person convicted of a violation of the provisions
34 of subsection (b) or (c) of this section shall be fined not less
35 than \$1,000 nor more than \$5,000 or confined in jail for a
36 period not to exceed six months, or both.

37 (e) In any criminal proceeding alleging that a person
38 violated the time requirements of this section, it is a defense
39 to the charge that a delay beyond the time periods provided
40 for in this section were caused by circumstances wholly
41 outside the control of the defendant.

42 (f) For purposes of this section, “cremation contract”
43 means an agreement to perform a cremation, as a “cremation”
44 is defined in subsection (g), section three, article six, chapter
45 thirty of this code. A cremation contract is an agreement
46 between a crematory and any authorized person or entity,
47 including, but not limited to, the following persons in order
48 of precedence:

49 (1) The deceased, who has expressed his or her wishes
50 regarding the disposal of their remains through a last will and
51 testament, an advance directive or preneed funeral contract,
52 as defined in section two, article fourteen, chapter forty-five
53 of this code;

54 (2) The surviving spouse of the deceased, unless a
55 petition to dissolve the marriage was pending at the time of
56 decedent’s death;

57 (3) An individual previously designated by the deceased
58 as the person with the right to control disposition of the
59 deceased’s remains in a writing signed and notarized by the
60 deceased: *Provided*, That no person may be designated to
61 serve in such capacity for more than one nonrelative at any
62 one time;

63 (4) The deceased person’s next of kin;

64 (5) A public official charged with arranging the final
65 disposition of an indigent deceased person or an unclaimed
66 corpse;

67 (6) A representative of an institution who is charged with
68 arranging the final disposition of a deceased who donated his
69 or her body to science;

70 (7) A public officer required by statute to arrange the
71 final disposition of a deceased person;

72 (8) Another funeral establishment; or

73 (9) An executor, administrator or other personal
74 representative of the deceased.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor